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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

FILED

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)
PONCE NICASIO BROADCASTING,) Case No. 04-26256-B-7
LP,)
Debtor(s).)
_____)
BRUCE FOX,) Adv. No. 06-02228-B
Plaintiff,)
vs.) D.C. No. PP-2
PONCE NICASIO BROADCASTING,)
INC, et al.,)
Respondent(s).) Submitted August 21, 2007
_____)

MEMORANDUM DECISION

Moving parties Ron V. Briggs, Brian Briggs, RJ Briggs, and Alexander Briggs (collectively, the "Briggs"), individually and on behalf of their individual retirement accounts, ask the court to grant them summary judgment in this adversary proceeding. Plaintiff Bruce Fox opposes the motion. For the reasons stated herein, the Briggs' motion for summary judgment filed on June 26, 2007 (Dkt. 87) (the "Briggs' PNB LP SJ Motion") is granted in part and denied in part. The court grants summary judgment in favor of Alexander Briggs on all of Plaintiff's claims for

1 relief. The court denies summary judgment as to Ron V. Briggs,
2 RJ Briggs, and Brian Briggs.

3 The Briggs' PNB Inc. LP Motion was filed on June 26, 2007,
4 initially set for hearing on July 24, 2007. After one
5 continuance, the court held a final hearing in Sacramento,
6 California on August 21, 2007. At the conclusion of the hearing,
7 the matter was taken under submission.

8 This is a core proceeding and the court has jurisdiction
9 over this matter. 28 U.S.C. §§ 1334 and 157. Venue is proper in
10 this court under 28 U.S.C. § 1409. There is no dispute
11 concerning jurisdiction, venue or core status.

12 The following constitutes the court's findings of fact and
13 conclusions of law pursuant to Fed. R. Bankr. P. 7052.

14
15 **PROCEDURAL HISTORY**

16 On June 17, 2004 debtor Ponce Nicasio Broadcasting, Ltd.
17 ("PNB LP") commenced the above captioned voluntary chapter 7 case
18 (the "PNB LP Case"). Thomas A. Aceituno was appointed trustee.
19 On September 28, 2005, the court approved an agreement between
20 the trustee and Plaintiff by which the trustee assigned his
21 avoidance powers in the PNB LP Case to Plaintiff.

22 On June 17, 2004, debtor Ponce Nicasio Broadcasting, Inc.
23 ("PNB Inc.") the general parnter of PNB LP, also commenced a
24 voluntary chapter 7 case, no. 04-26255-B-7 (the "PNB Inc. Case").
25 Thomas A. Aceituno was appointed trustee. On September 28, 2005,
26 the court approved an agreement between the trustee and Plaintiff
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1 by which the trustee assigned his avoidance powers in the PNB LP
2 case to Plaintiff.

3 On June 16, 2006, Plaintiff filed two identical complaints
4 in the PNB Inc. Case and the PNB LP Case. The complaint in the
5 PNB LP Case commenced the instant adversary proceeding, and the
6 complaint in the PNB Inc. Case commenced Adversary Proceeding 06-
7 2227-B. Although both complaints lump PNB Inc. and PNB LP
8 together under the term "Debtors," the above-captioned complaint
9 seeks in part avoidance of alleged fraudulent transfers made by
10 PNB LP to the Briggs. Ron V. Briggs filed an answer on August
11 14, 2007. Alexander Briggs, Brian Briggs, and Ronald J. Briggs
12 filed an answer on December 1, 2006.

13 The Briggs have also filed a motion for summary judgment in
14 Adversary Proceeding 06-2227-B (the "Briggs' PNB Inc. SJ Motion")
15 that is identical to the Briggs' PNB Inc. LP Motion. The court
16 has rendered a decision on the Briggs' PNB Inc. SJ Motion
17 concurrently with its decision here on the Briggs' PNB LP SJ
18 Motion.

19 I. FACTS

20 The dispute between Plaintiff and the Briggs arises out of a
21 business relationship among Plaintiff, PNB LP, and PNB Inc. PNB
22 LP was formed for the purpose of managing a local television
23 station. PNB Inc. was formed to act as managing and general
24 partner of PNB LP. In the mid-to-late 1990s PNB LP entered into
25 negotiations to sell the television station to Paxson
26 Communications ("Paxson"). PNB LP also entered into three
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1 agreements with Plaintiff, an Affiliation Agreement (dated May
2 26, 1995), a Time Brokerage Agreement (dated September 6, 1996),
3 and an Option Agreement (dated September 6, 1996).

4 Following the execution of the three agreements, Plaintiff
5 and PNB LP disagreed over whether Plaintiff was entitled to
6 commissions based on the agreements. Plaintiff sued PNB LP and
7 PNB Inc. In May 1998 El Dorado County Superior Court entered
8 judgment in favor of Plaintiff, awarding him \$38,333.00 under the
9 Affiliation Agreement and \$53,550.00 under the Time Brokerage
10 Agreement. The superior court also granted declaratory relief
11 stating that Plaintiff would be entitled to a three percent
12 commission under the terms of the Option Agreement in the event
13 that the television station was sold "under" the terms of the
14 September 6, 1996 Option Agreement. The California Court of
15 Appeal affirmed the trial court decision on April 17, 2000, and
16 on May 16, 2000 PNB LP and PNB Inc. satisfied the money
17 judgments.

18 The declaratory relief awarded by the superior court,
19 however, continued to be a point of contention between Plaintiff
20 and the PNB LP and PNB Inc. Concurrently with the litigation
21 between Plaintiff and PNB LP and PNB Inc., PNB LP had also been
22 involved in litigation with Paxson over the sale of the
23 television station. Paxson and PNB LP settled their dispute in
24 March, 2000. The sale of the television station to Paxson closed
25 in June, 2000. PNB LP then took the position that the sale of
26 the television station did not occur "under" the September 6,
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1 1996 Option Agreement and that Plaintiff was not entitled to a
2 commission. Plaintiff disagreed and sought to enforce the
3 declaratory judgment. On June 21, 2000, Plaintiff applied for
4 and obtained an order for examination from the El Dorado County
5 Superior Court. The order for examination was issued on June 22,
6 2000.

7 PNB LP then applied for a temporary restraining order to
8 halt Plaintiff's attempt to collect the commission. On August
9 28, 2005 the El Dorado County Superior Court vacated its prior
10 order for examination and enjoined Plaintiff from taking further
11 action to collect the commission. The superior court also
12 directed the parties to proceed by evidentiary hearing under
13 California Civil Procedure Code Section 724.050 to resolve the
14 issue of whether Plaintiff's judgment had been satisfied. The
15 date for the evidentiary hearing was set for March 13, 2001.

16 Prior to obtaining the restraining order PNB LP had started
17 a process by which it intended to buy out the limited partnership
18 interests held by Daniel Briggs, Jordan Briggs, Jessica Briggs,
19 John Bailey, Kathleen Bailey, Kristine C. Bailey, Steven C.
20 Bailey, and Kate Bailey (the "Former Partners"). The Former
21 Partners are also named as defendants in this adversary
22 proceeding. PNB LP hired an accountant to value the capital
23 balance of the partnership and assess the value of a one percent
24 interest. The preliminary capital balance was valued at
25 \$13,709,703.38. Each one percent interest was initially valued
26 at \$137,097.03. PNB LP then reduced the value of each one
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1 percent interest to \$130,097.03, so as to set aside \$700,000.00
 2 in the event that Plaintiff were to be awarded a commission
 3 following the March 2001 evidentiary hearing. The Former
 4 Partners agreed to accept the reduced valuation of their
 5 interests. The Former Partners held 30.6 of the limited
 6 partnership interests at the time of the buyout transaction. PNB
 7 LP transferred funds from its accounts to the Former Partners.
 8 In exchange for the transfer of funds to each of the Former
 9 Partners, PNB LP received a transfer of the recipient Former
 10 Partners' limited partnership interest, and each recipient Former
 11 Partner executed a and delivered to PNB LP a mutual and general
 12 release and waiver. The funds transferred to the Former Partners
 13 totaled \$3,980,969.12. The buyout transactions were concluded as
 14 of August 31, 2000.

15 At least some of the Briggs also received transfers from PNB
 16 LP and/or PNB Inc. at the time that the Former Partners were
 17 bought out and afterward. However, the parties differ on the
 18 specific transfers. The Briggs admit that the following
 19 transfers occurred:

Transfer	Date	Amount
Ron V. Briggs	8/7/00	\$115,000.00
Ron V. Briggs	8/17/00	\$75,000.00
Ron V. Briggs	8/28/00	\$100,000.00
Ron Briggs Roth IRA	8/29/00	\$50,000.00
Ron V. Briggs	12/8/00	\$75,000.00
Ron V. Briggs	12/27/00	\$25,000.00

1	Ron V. Briggs	1/31/02	\$4,029.69
2	Ron V. Briggs	1/31/02	\$4,029.69
3	Brian Briggs	8/28/00	\$8,000.00
4	Brian Briggs	9/13/00	\$10,000.00
5	Brian Briggs	10/14/00	\$16,000.00
6	R.J. Briggs	8/28/00	\$42,500.00
7	R.J. Briggs	10/25/00	\$5,500.00

8 The Briggs admit to the transfers listed above based on
9 Plaintiff's responses to interrogatories in which Plaintiff
10 identified transfers he believed to be avoidable. In his
11 interrogatory responses Plaintiff also identified transfers made
12 to a "Z & B Ranch" and to American Express as avoidable. Neither
13 Z & B Ranch nor American Express are named as defendants in this
14 adversary proceeding or the adversary proceeding commenced in the
15 PNB LP case. Plaintiff also did not identify any avoidable
16 transfers made to Alexander Briggs, and the Briggs admit to no
17 transfers received by Alexander. The Briggs concede that Brian
18 Briggs received a total of \$34,000.00 in transfers between August
19 28, 2000 and October 14, 2000. The Briggs also concede that
20 Ronald J. Briggs received a total of \$48,000.00 in transfers
21 between August 28, 2000 and October 25, 2000. The Briggs also
22 concede that Ron V. Briggs personally received a total of
23 \$398,056.38 in transfers between August 7, 2000 and January 31
24 2002, with the bulk of those transfers received no later than
25 December 27, 2000. Finally, the Briggs concede that Ron V.
26 Briggs' Roth IRA received \$50,000.00 on August 29, 2000. The
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1 Briggs do not identify whether PNB LP or PNB Inc. made the
2 transfers that they have conceded some of them received.

3 Plaintiff alleges in his opposition that at the time that
4 the Former Partners were bought out, the Briggs took
5 distributions amounting to all of the remaining assets of PNB LP
6 and PNB Inc.¹ He further alleges that Ron V. Briggs received
7 \$3,300,000.00 in transfers between May 2000 and January 2003, and
8 of this amount, after September 2001 Ron V. Briggs received
9 distributions totaling \$209,000.00 from the accounts of PNB LP
10 and PNB Inc. Plaintiff alleges that other distributions of at
11 least \$170,000.00 occurred after September 2001, but Plaintiff
12 does not allege who received those distributions. Plaintiff
13 further alleges that overall, over \$7,500,000.00 in transfers
14 were made to both the Former Partners and the Briggs after June
15 2000.

16 Following the sale of the television station to Paxson and
17 the August 2000 buyout transaction, PNB Inc. held funds totaling
18 \$446,871.43 in accounts under its name. PNB LP held funds
19 totaling \$3,994,567.44 in accounts under its name. Thereafter,
20 PNB Inc. and PNB LP used the remaining funds that were not
21 disbursed from the PNB LP and PNB Inc. accounts to either the
22 Former Partners or the Briggs to make stock purchases and to
23 purchase investments on the stock market.

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25 ¹This allegation is based on Plaintiff's argument that PNB
26 LP and PNB Inc. were dissolved or ceased to exist after the
27 Former Partners were bought out in August 2000. The court
addresses the merits of this argument elsewhere in this decision.

The specific account balances for PNB LP and PNB Inc.'s investment portfolio accounts for the period from June 2000 to January 2002, covering the period during which specifically identified transfers were received, are listed in the table below. The Briggs assert that the portfolio account balances represent the bulk of assets owned by PNB LP and PNB Inc. during this period.

End of Date	PNB LP First Union Account Balance	PNB LP Union Bank Account Balance	PNB Inc. First Union Account Balance
06/2000	\$7,728,717.42	\$187,000.01	\$232,533.96
07/2000	\$7,666,234.74	\$160,998.25	\$337,183.93
08/2000	\$3,994,567.44	\$2,217,735.87	\$446,871.43
09/2000	\$3,675,869.87	\$109,880.47	\$373,746.43
10/2000	\$3,507,558.06	\$32,000.01	\$478,995.81
11/2000	\$2,608,401.93	\$35,305.23	\$392,446.19
12/2000	\$1,675,252.80	\$4,000.01	\$461,369.09
01/2001	\$2,450,170.05	\$22,000.01	\$511,530.98
02/2001	\$1,282,932.05	\$0.01	\$450,446.30
03/2001	\$20,031.05	\$0.01	\$1,314,824.22
04/2001	\$51.19	\$0.01	\$1,720,178.52
05/2001	\$51.19		\$1,514,439.73
06/2001	\$51.39		\$1,832,034.71
07/2001			\$1,352,360.14
08/2001			\$902,914.95
09/2001			\$481,124.82
10/2001			\$257,212.78
11/2001			\$193,814.97
12/2001			\$89,787.46
01/2002			\$89,200.50

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2 The portfolio account balances listed above are based on the
3 Briggs' summary of the account balances and account statements
4 submitted by the Briggs. Plaintiff has not submitted any
5 evidence of the specific balances of any account held by PNB LP
6 or PNB Inc. during the period over which the disputed transfers
7 occurred. Plaintiff has also not submitted any evidence of other
8 assets held by PNB LP or PNB Inc. during that period.

9 In August 2001, Plaintiff filed another action in El Dorado
10 County Superior Court, seeking additional payment under the Time
11 Brokerage Agreement based on the passage of time from the May
12 1998 judgment. The superior court entered judgment for Plaintiff
13 in the amount of \$77,350.00 in July 2003.

14 Also in July 2003 the El Dorado County Superior Court
15 concluded proceedings under California Civil Procedure Code
16 Section 724.050, finding that the sale of the television station
17 from PNB LP to Paxson occurred "under" the Option Agreement. The
18 superior court awarded Plaintiff \$531,750.00 plus interest.
19 However, by the time Plaintiff obtained this money judgment,
20 neither PNB LP nor PNB Inc. had sufficient assets to satisfy the
21 judgment. Both PNB LP and PNB Inc. commenced voluntary
22 bankruptcy cases in June 2004 following Plaintiff's further
23 attempts to enforce the money judgment.

1 Procedure 7056, the moving party on a motion for summary judgment
2 must demonstrate that there is no genuine dispute of material
3 fact and that the movant is entitled to judgment as a matter of
4 law. Fed R. Civ. P. 56(c).

5 The initial burden of showing the absence of a material
6 factual issue is on the moving party. Celotex Corp. v. Catrett,
7 477 U.S. 317, 323 (1986) ("a party seeking summary judgment always
8 bears the initial responsibility of informing the district court
9 of the basis for the motion"); De Horney v. Bank of America Nat'l
10 Trust & Sav. Assoc., 879 F.2d 459, 464 (9th Cir. 1989). If the
11 moving party would not ultimately bear the burden of persuasion
12 at trial, the movant may satisfy this burden by showing that the
13 record lacks substantial evidence supporting the nonmovant's
14 claim. Celotex, 477 U.S. at 324-26. The movant is not required
15 to show that it is entitled to relief on each and every element
16 of the claim for relief. Instead, if the movant can show that
17 the plaintiff cannot meet the plaintiff's burden of proving a
18 single necessary element of the first claim for relief, then the
19 movant can prevail. See Adickes v. S.H. Kress & Co., 398 U.S.
20 144, 158-60 (1970).

21 However, if the movant would ultimately have the burden of
22 persuasion on an issue, such as successfully raising an
23 affirmative defense to the action, the movant must shoulder the
24 burden usually allocated to the plaintiff by showing evidence
25 that no reasonable jury could disregard. See Edison v. Reliable
26 Life Ins. Co., 664 F.2d 1130, 1131 (9th Cir. 1981); Herndon v.

1 Massachusetts Gen. Life Ins. Co., 28 F. Supp. 379, 382 (W.D. Va.
2 1998).

3 Once the movant has met its burden of production, the burden
4 shifts to the nonmovant to show that there is in fact a genuine
5 issue for trial. The nonmoving party must identify specific
6 facts, supported by evidence, affidavits, depositions,
7 interrogatories, sworn or certified copies of documents, or other
8 material contemplated by Federal Rule of Civil Procedure 56(e),
9 which articulate and illustrate the presence of a genuine issue
10 requiring a trial. Fed R. Civ. P. 56(e); Celotex, 477 U.S. at
11 324. The evidence presented by the nonmovant must be substantial
12 and the court must consider the nonmovant's substantive burden of
13 persuasion at trial. Anderson v. Liberty Lobby, Inc., 477 U.S.
14 242, 252 (1986). Mere assertions do not constitute facts
15 sufficient to require a trial. Restating a pleading, submitting
16 new pleadings, or simply making assertion by legal memorandum or
17 even by affidavit do not set forth specific facts requiring a
18 need for trial. The nonmovant must demonstrate that there will
19 be testimonial, documentary, or other evidence to support the
20 claim. See Celotex, 477 U.S. at 324 (1986); Gasaway v.
21 Northwestern Mut. Life Ins. Co., 26 F.3d 957, 959-60 (9th Cir.
22 1994). And "[b]ecause 'credibility determinations, the weighing
23 of the evidence, and the drawing of legitimate inferences from
24 facts are jury functions, not those of a judge', '[t]he evidence
25 of the non-movant is to be believed, and all justifiable
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1 inferences are to be drawn in his favor.'" Giles v. GMAC, 494
2 F.3d 965, 872 (9th Cir. 2007) (quoting Anderson, 391 U.S. at 255).

3 In addition to showing that there are no genuine issues of
4 material fact that require trial, the movant must also show that
5 it is legally entitled to judgment in its favor. And to defeat
6 summary judgment, the nonmovant must articulate a viable legal
7 theory that entitles it to relief should it prevail on the facts
8 at trial. "The showing of a 'genuine issue for trial' is
9 predicated upon the existence of a legal theory which remains
10 viable under the asserted version of the facts, and which would
11 entitle the party opposing the motion (assuming his version to be
12 true, to a judgment as a matter of law." Mc Guire v. Columbia
13 Broadcasting System, Inc., 399 F.2d 902, 902 (9th Cir. 1968).

14 15 2. Fraudulent Transfer

16 Both the Briggs and Plaintiff agree that Plaintiff is barred
17 from bringing an action to avoid the transfers in dispute here
18 under 11 U.S.C. Section 548(a), as that section is limited to
19 avoidance of transfers made within one year of the date of the
20 filing of the petition in the parent bankruptcy case. The
21 disputed transfers that the parties have identified with any
22 specificity occurred in between 2000 and 2002; the parent
23 bankruptcy case was commenced on June 17, 2004. Instead, all
24 parties agree that Plaintiff may proceed pursuant to California
25 state law governing fraudulent transfers, as permitted by 11
26 U.S.C. Section 544(b)(1), which allows the trustee to avoid any

1 transfer of an interest of the debtor in property that is
2 voidable under applicable law by a creditor holding an allowed
3 unsecured claim.

4 Whether the transfer of an interest or an asset of the
5 debtor to one or more of the Briggs constitutes a fraudulent
6 transfer in this proceeding is governed by California's version
7 of the Uniform Fraudulent Transfer Act (the "UFTA"), codified in
8 California Civil Code Section 3439, et seq. The UFTA covers
9 transfers that are fraudulent because they were made with actual
10 intent to hinder, delay, or defraud creditors, and transfers that
11 are constructively fraudulent. An essential element of the any
12 cause of action brought under the California UFTA that seeks the
13 avoidance of or other remedies related to an allegedly fraudulent
14 transfer is the existence of an actual transfer made by the
15 debtor to a third party.²

16 A transfer may be constructively fraudulent with respect to
17 a creditor whose claim arose before or after the transfer if the
18 transfer is made without receiving a reasonably equivalent value
19 in exchange for the transfer, and the debtor either was engaged
20 or was about to engage in a business or a transaction for which
21 the remaining assets of the debtor were unreasonably small in
22 relation to the business or transaction, or the debtor intended
23 to incur, or believed or reasonably should have believed that he
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25 ²The court notes that the California UFTA also provides for
26 a cause of action for remedies related to obligations
27 fraudulently incurred by the debtor. Here, however, Plaintiff
only seeks to avoid fraudulent transfers.

1 or she would incur, debts beyond his or her ability to pay as
2 they became due. See Cal Civ. Code. § 3439.04(a)(2). A transfer
3 may be constructively fraudulent with respect to a creditor whose
4 claim arose before the transfer was made if the debtor made the
5 transfer without receiving a reasonably equivalent value in
6 exchange for the transfer and the debtor was insolvent at that
7 time or became insolvent as a result of the transfer. See Cal.
8 Civ. Code § 3439.05.

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10 Pursuant to California Civil Code Section 3439.04(a)(1), a
11 transfer is fraudulent as to a creditor whose claim arose either
12 before or after the transfer was made if the transfer was made
13 with "actual intent to hinder, delay, or defraud any creditor of
14 the debtor." Cal Civ. Code § 3439.04(a)(1). "Actual intent" is
15 informed by a non-exclusive list of eleven factors listed under
16 Section 3439.04(b). The eleven factors include:

- 17 (1) Whether the transfer or obligation was to an
insider.
- 18 (2) Whether the debtor retained possession or control
19 of the property after the transfer.
- 20 (3) Whether the transfer or obligation was disclosed or
concealed.
- 21 (4) Whether before the transfer was made or obligation
22 was incurred, the debtor was sued or threatened with
suit.
- 23 (5) Whether the transfer was of substantially all the
debtor's assets.
- 24 (6) Whether the debtor absconded.
- 25 (7) Whether the debtor removed or concealed assets.
- 26 (8) Whether the value of the consideration received by
27 the debtor was reasonably equivalent to the value of
the asset transferred or the amount of the obligation
incurred.

1 (9) Whether the debtor was insolvent or became
2 insolvent shortly after the transfer was made or the
obligation was incurred.

3 (10) Whether the transfer occurred shortly before or
shortly after a substantial debt was incurred.

4 (11) Whether the debtor transferred the essential
5 assets of the business to a lienholder who transferred
the assets to an insider of the debtor.

6 Cal Civ. Code § 3439(b)(1)-(11). The eleven factors were added
7 to the statute in 2004. Pursuant to Section 3439.04(c), the
8 addition of the factors to Section 3439 does not constitute a
9 change in applicable law, but is instead declaratory of it and is
10 not intended to affect prior judicial decisions interpreting the
11 statute. The eleven factors do not "create a mathematical
12 formula to establish actual intent. There is no minimum number
13 of factors that must be present before the scale tips in favor of
14 finding actual intent to defraud. [The] list of factors is meant
15 to provide guidance to the trial court, not compel a finding one
16 way or the other." Filip v. Bucurenciu, 129 Cal. App. 4th 825,
17 834 (2005).

18 The statute also provides a defense to a fraudulent transfer
19 action. Pursuant Section 3439.08(a), a transfer is not voidable
20 against a person who took in good faith and for reasonably
21 equivalent value or against any subsequent transferee or obligee
22 taking from such a person. Cal. Civ. Code § 3439.08(a).
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1 **B. Alexander Briggs Is Entitled To Summary Judgment**
2 **on All of Plaintiff's Claims for Relief**
3 **Under California Civil Code Section 3439 Plaintiff's Claim for**
4 **Turnover**

5 Based on the evidence in the record and the applicable law
6 discussed above, the court concludes that defendant Alexander
7 Briggs is entitled to summary judgment on all of Plaintiff's
8 claims for relief under California Civil Code Section 3439. As
9 noted above, a requisite element of a claim for relief under
10 Section 3439 is the existence of an actual transfer from the
11 debtor to the transferee. Alexander Briggs does not admit to
12 receiving any transfers from PNB Inc. in the Briggs' PNB LP SJ
13 Motion. Plaintiff has not come forward with any evidence that
14 Alexander Briggs received any transfers from PNB Inc. Plaintiff
15 cannot sustain any claim against Alexander Briggs seeking
16 avoidance of a fraudulent transfer if there is no evidence in the
17 record that a transfer to Alexander Briggs was made.

18 Plaintiff does argue that Alexander Briggs, who remained a
19 limited partner in PNB LP after the Former Partners were bought
20 out, along with Ron Briggs, RJ Briggs, and Brian Briggs, took all
21 of the assets of both PNB LP and PNB Inc., disbanded PNB LP and
22 PNB Inc., and treated the funds they allegedly took as the funds
23 of a new entity, which Plaintiff describes as "some form of
24 general partnership, with Ron Briggs installed in as the general
25 partner, with full authority to disburse assets as he chose."
26 (Dkt. 93 at 19). Plaintiff argues that the "new" entity was a
27 personal investment company that engaged in high-risk

1 investments. (Dkt. 93 at 8). Plaintiff also argues that PNB LP
2 ceased to exist because PNB Inc., as the general partner of the
3 limited partnership, ceased to exist when it "repurchased all of
4 its own stock, essentially devouring itself and creating a non-
5 entity." (Dkt. 93 at 7).

6 This argument, however, is not supported by the evidence
7 presented by Plaintiff or by the legal authorities applicable to
8 dissolution of corporate and partnership entities. Plaintiff
9 makes a number of assertions and allegations regarding the
10 dissolution or disbanding of PNB LP and PNB Inc., but his only
11 evidence that PNB Inc. and PNB LP ceased to exist as "viable
12 entities" following the transfers consists of excerpts deposition
13 testimony of Ron V. Briggs. (Dkt. 93 at 23-50). Plaintiff
14 points to Ron Briggs' statement that all shares of stock in PNB
15 Inc. were signed over to PNB Inc. at the time of the transfer to
16 the Former Partners and remained in the treasury (Dkt. 93 at 30)
17 as evidence that PNB Inc. ceased to exist. Plaintiff also points
18 to Ron Briggs' statements that records for the partnership or
19 corporation were not maintained or were lost due to obsolescence
20 of the computer software used to maintain them (Dkt. 93 at 23,
21 76) as evidence that neither the corporation nor the partnership
22 continued to exist after the transfers. Plaintiff asserts that
23 it is "fundamental law" that in order to exist the entities must
24 have maintained records, had shareholders, and conducted
25 directors' or shareholders' meetings. Plaintiff also argues that
26 because the limited partnership agreement states that the purpose
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1 of the limited partnership was to "acquire, own, operate,
2 develop, manage or otherwise engage in the business relating to
3 the operating of a television station," (Dkt. 85 at 51), PNB LP
4 ceased to exist after the television station was sold to Paxson
5 and the partnership agreement was not amended to reflect a new
6 purpose.

7 The argument fails. Despite the allegedly fundamental
8 nature of the law underpinning Plaintiff's theories of corporate
9 and partnership dissolution, Plaintiff has cited no legal
10 authority that supports his assertion that a corporation is
11 automatically dissolved when its directors or officers lose or
12 fail to maintain corporate records, or when it redeems all shares
13 of its stock and retains the shares without offering them for
14 sale. The court is unaware of any such authority. Plaintiff's
15 argument is probably derived from the concept of "piercing the
16 corporate veil." However, "piercing the corporate veil" does not
17 destroy the entity; it only creates liability to the extent
18 necessary to prevent a fraud. "When it is claimed that a parent
19 corporation should be liable because it is the alter ego of its
20 subsidiary, equity commands that the corporate wall be breached.
21 Yet the wall remains; the parent is liable through the acts of
22 the subsidiary, but as a separate entity." Mesler v. Bragg
23 Management Co., 39 Cal.3d 290, 301, 702 P.2d 601, 607 (1985).

24 Thus, Plaintiff's argument that a theory of alter ego
25 liability should be applied to a theory of dissolution fails.
26 Plaintiff has also not shown that either PNB LP or PNB Inc. were
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1 dissolved under accepted theories of dissolution. Under
2 California law, dissolution of a corporation can be either
3 involuntary and accomplished by court proceeding, see Cal. Corp.
4 Code § 1800 et. seq., or voluntarily accomplished by the election
5 of the board of directors or shareholders, see Cal. Corp. Code §
6 1900 et. seq. Plaintiff has submitted no court decree or order
7 winding up and dissolving PNB Inc. that evinces an involuntary
8 dissolution of the corporation. See Cal. Corp. Code § 1804. Nor
9 has Plaintiff submitted any certificate of dissolution that
10 evinces a voluntary dissolution of the corporation. See Cal.
11 Corp. Code § 1905.

12 Similarly, under California law a limited partnership is
13 dissolved and its affairs are wound upon the first to occur of
14 the four following events:

15 1.) At the time specified, or on the occurrence of
16 events provided in the partnership agreement. Cal.
17 Corp. Code § 15681(a).

18 2.) Upon the written consent of all general partners
19 and a majority in interest of the limited partners,
20 unless otherwise provided in the partnership agreement.
21 Cal. Corp. Code § 15681(b).

22 3.) Unless otherwise provided in the partnership
23 agreement, when a general partner ceases to be a
24 general partner pursuant to the provisions of Cal.
25 Corp. Code § 15642, unless (1) there is one or more
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1 remaining general partners that agree to continue the
2 business, or (2) a majority in interest of the limited
3 partners agree in writing to continue the partnership
4 and, within six months after the last remaining general
5 partner ceases to be a partner, admit one or more new
6 general partners. Cal. Corp. Code § 15681(c). If the
7 general partner is a corporation, the corporation
8 ceases to be a general partner pursuant to Corporations
9 Code Section 15642 upon the filing of a certificate of
10 dissolution or its equivalent. Cal. Corp. Code §
11 15642(h).

12 4.) Entry of a judicial decree of dissolution. Cal.
13 Corp. Code. § 15681(d).

14 Plaintiff has provided no evidence that any of the events
15 listed above has occurred that caused either PNB Inc. or PNB LP
16 to "cease to exist" immediately after the transfers to the Former
17 Partners. Rather, Plaintiff confuses theories of alter ego
18 liability and partner liability with theories of dissolution.
19 Whether or not a director or officer is liable for the actions of
20 a corporation, and whether or not a partner is liable for the
21 actions of a partnership such that the entities intended to limit
22 liability should be disregarded does not necessarily lead to a
23 conclusion that the corporation or partnership does not exist.
24 Nor does it lead to a conclusion that informs the issue at hand
25 here, which is whether PNB Inc. actually made any transfers to
26 Alexander Briggs. Whether Ron Briggs or any other person
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1 subsequently treated funds held in the accounts of PNB LP or PNB
2 Inc. as the funds of a separate business venture or even his own
3 personal funds does not compel the conclusion that Alexander
4 Briggs received a transfer from PNB Inc.

5 As a result, the court concludes that, given the lack of any
6 evidence in the record that Alexander Briggs received a transfer
7 from PNB Inc., Alexander Briggs is entitled to summary judgment
8 that Plaintiff take nothing by his claims for relief under
9 California Civil Code Section 3439.

10 Furthermore, because the court has concluded that Alexander
11 Briggs is entitled to summary judgment on Plaintiff's claims
12 under California Civil Code Section 3439, Alexander Briggs is
13 also entitled to summary judgment that Plaintiff take nothing
14 from Alexander Briggs by Plaintiff's claim for turnover.
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17 **B. Ron V. Briggs, RJ Briggs, and Brian Briggs Have Not Sustained**
18 **Their Initial Burden of Showing That There is No Genuine Issue of**
19 **Material Fact that the Transfers Were Not Fraudulent Or That They**
20 **are Entitled To Judgment As a Matter of Law**

21 In applying the evidence presented by both parties to the
22 causes of action set forth in the California UFTA, the court
23 concludes that Ron Briggs, RJ Briggs, and Brian Briggs are not
24 entitled to summary judgment on any claim for relief that
25 Plaintiff asserts under the California UFTA. However, the
26 reasons that the court concludes that Ron Briggs, RJ Briggs, and
27 Brian Briggs are not entitled to summary judgment are not
28 necessarily the same reasons set forth by Plaintiff in his

1 opposition. Rather, the court finds that Ron Briggs, RJ Briggs,
2 and Brian Briggs have failed to carry their initial burden of
3 demonstrating that there is no genuine issue of material fact as
4 to whether the transfers they admit they received are avoidable
5 for the purposes of the California UFTA and that they are
6 therefore entitled to judgment as a matter of law.

7 Ron Briggs, RJ Briggs, and Brian Briggs' failure to meet
8 their initial burden is primarily due to the fact that they fail
9 to show evidence establishing the source of the transfers they
10 admit they received. Although Ron Briggs, RJ Briggs, Brian
11 Briggs and Plaintiff lump PNB LP and PNB Inc. together as a
12 single entity, referring to them collectively in various
13 pleadings as "Debtors," "PNB," "Ponce Nicasio," or simply
14 "Ponce," that conceptualization, while perhaps convenient, is
15 legally insufficient for determining whether the alleged
16 transfers are avoidable. PNB LP and PNB Inc. are separate
17 entities in separate bankruptcy cases. No substantive
18 consolidation of the cases has occurred.

19 Ron Briggs, RJ Briggs, and Brian Briggs admit in the Briggs'
20 PNB LP SJ Motion that they received some transfers. They have
21 admitted receiving transfers totaling \$508,383.65 to Ron between
22 August 7, 2000 and January 31, 2002. They have admitted
23 receiving transfers totaling \$34,000.00 to Brian between August
24 28, 2000 and October 14, 2000. And they have admitted receiving
25 transfers totaling \$48,000.00 to RJ Briggs between August 28,
26 2000 and October 25, 2000. However, nowhere in the motion or in
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1 the supporting declaration of Ron V. Briggs do Ron Briggs, RJ
2 Briggs, and Brian Briggs specify whether those transfers came
3 from PNB LP or PNB Inc. The motion and the declaration simply
4 state that the transfers came from "PNB." This prevents the
5 court from making essential determinations with respect to
6 whether a genuine issues of material fact exists, or whether Ron
7 V. Briggs, RJ Briggs, and Brian Briggs are entitled to judgment
8 as a matter of law. It also prevents the court from determining
9 whether summary judgment is appropriate in each of the adversary
10 proceedings commenced in the PNB LP and PNB Inc. cases.

11 The court will next discuss how Ron V. Briggs, RJ Briggs,
12 and Brian Briggs' failure to present evidence as to the specific
13 transferring entity for each transfer received prevents them from
14 meeting their initial burden of showing that the are genuine
15 issues of material fact as to each cause of action and that they
16 are entitled to judgment as a matter of law.

17 **1. Section 3439.05**

18 With respect to Plaintiff's cause of action under Section
19 3439.05, Ron V. Briggs, RJ Briggs, and Brian Briggs' failure to
20 identify whether PNB LP or PNB Inc. made the transfers that they
21 admit they received prevents the court from making a
22 determination as to both elements of the cause of action.
23 Without knowing the identity of the transferring entity, the
24 court cannot determine that there is no genuine issue of material
25 fact as to whether the transferring entity received reasonably
26 equivalent value in exchange for the transfer. Without knowing
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1 the identity of the transferring entity, the court also cannot
2 determine that there is no genuine issue of material fact as to
3 whether the entity was insolvent at the time the transfer was
4 made or whether the entity became insolvent as a result of the
5 transfer; if the identity of the transferring entity is unknown,
6 its financial condition before and after the transfer is also
7 unknown.

8 For example, Ron V. Briggs, RJ Briggs, and Brian Briggs
9 received the bulk of the transfers that they admit to personally
10 receiving between August 2000 and the end of December 2000. At
11 the end of July, 2000 PNB LP held \$7,827,232.99 in its portfolio
12 investment accounts; by the end of December, 2000 its account
13 balances had diminished to \$1,679,252.81. PNB Inc. held
14 \$337,183.93 in its portfolio investment account at the end of
15 July 2000; by the end of December, 2000 the account balance was
16 \$461,369.09. Both PNB LP and PNB Inc. owed a contingent
17 liability to Plaintiff. If Ron V. Briggs, RJ Briggs, and Brian
18 Briggs received their transfers from PNB LP during this period,
19 then based on the evidence in the record PNB LP was not insolvent
20 at the time that any of the transfers were made and it did not
21 become insolvent as a result of any of the transfers, even
22 considering the full amount of the \$531,750.00 that Plaintiff was
23 eventually awarded.

24 However, the court is unable to make the same determination
25 with respect to PNB Inc., as there is insufficient evidence in
26 the record to show that PNB Inc. was not insolvent between August
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1 2000 and December 2000, the period in which the bulk of the
2 transfers were received by Ron V. Briggs, RJ Briggs, and Brian
3 Briggs. The court lacks sufficient evidence regarding the value
4 of PNB Inc.'s assets during that period. Ron V. Briggs, RJ
5 Briggs, and Brian Briggs have presented evidence of the funds
6 held by PNB Inc. in its portfolio accounts, but have not
7 presented evidence of the value of PNB Inc.'s share in PNB LP,
8 which the court must consider in determining the value of PNB
9 Inc.'s assets. Ron V. Briggs, RJ Briggs, and Brian Briggs have
10 presented evidence in the form of PNB LP's amended limited
11 partnership agreement that shows that PNB Inc. held a 52% share
12 of PNB LP as general partner in 1983. (Dkt. 85 at 56). Ron V.
13 Briggs, RJ Briggs and Brian Briggs have not presented evidence
14 regarding PNB Inc.'s share of PNB LP at the time that they
15 received the transfers they admit to receiving. The court does
16 not find the 1983 amended limited partnership agreement to
17 constitute evidence sufficient to allow Ron V. Briggs, RJ Briggs,
18 and Brian Briggs to carry their initial burden, as the amended
19 limited partnership agreement does not appear to reflect changes
20 in the ownership structure of PNB LP that occurred after 1983,
21 and there are inconsistencies between the ownership structure
22 described in the amended limited partnership agreement and the
23 ownership structure described in the motion and the declaration
24 of Ron V. Briggs. First, the court notes that the amended
25 limited partnership agreement defines the general partner, "Class
26 'A' Limited Partner" (who is not identified by name in the
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1 agreement), and "Class 'B' Limited Partners," who are identified
2 as Carmen Briggs, Yolanda Nava, and Mary Ann Alonzo. (Dkt. 85 at
3 56). According to the agreement, the Class A limited partner
4 held an 18% share, Carmen Briggs held a 15.6% share, Yolanda Nava
5 held a 7.2% share, and Mary Ann Alonzo held a 7.2% share of the
6 limited partnership. The amended limited partnership agreement
7 does not list any of the defendants in this adversary proceeding,
8 including the Former Partners or Ron V. Briggs, RJ Briggs, Brian
9 Briggs, or Alexander Briggs. This raises a genuine issue of
10 material fact as to PNB Inc.'s share in PNB LP at the time that
11 the disputed transfers were made.

12 Second, the existence of a genuine issue of material fact is
13 further reinforced by inconsistencies in the evidence presented
14 regarding the ownership structure of PNB LP. The declaration of
15 Ron V. Briggs (Dkt. 89) states that at the time that the Former
16 Partners were bought out, the Former Partners collectively held a
17 30.6% share in PNB LP (Dkt. 89 at 4-5), Ron V. Briggs held a
18 sixty-eight percent (68%) share (Dkt. 89 at 9), Brian Briggs held
19 a one percent (1%) share personally, Brian Briggs' IRA held a one
20 percent (1%) share, RJ Briggs held a one percent (1%) share
21 personally, and RJ Briggs' IRA held a one percent (1%) share
22 (Dkt. 89 at 9). These interests total 102.6%, without
23 considering any share for limited partner Alexander Briggs or
24 general partner PNB Inc., the amounts of which are not disclosed
25 in Ron V. Briggs' declaration. The share percentages listed
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1 above are also not consistent with the share percentages listed
2 in the amended limited partnership agreement as described above.

3 Due to the inconsistencies in the evidence presented, there
4 is a genuine issue of material fact as to whether PNB Inc. held
5 any interest in PNB LP at the time the disputed transfers were
6 made and, if it did hold an interest, the value of that interest.
7 There is therefore also a genuine issue of material fact as to
8 the value of all of PNB Inc.'s assets at the time that the
9 disputed transfers were made. Considering that the funds held by
10 PNB Inc. in its portfolio account between August 2000 and
11 December 2000 were not greater than the amount of the commission
12 that Plaintiff was eventually awarded, it is possible that PNB
13 Inc. was insolvent during the entire period, as the PNB Inc.'s
14 assets may not have exceeded its debts. Accordingly, there is a
15 genuine issue of material fact as to whether PNB Inc. was legally
16 insolvent for the purposes of the California UFTA at the time
17 that the disputed transfers were made.

18 The court recognizes that Ron V. Briggs, RJ Briggs, and
19 Brian Briggs have argued that the value of the debt owed to
20 Plaintiff should be discounted by fifty percent (50%) from the
21 full amount of the \$531,750.00 that Plaintiff was eventually
22 awarded in July 2003, because at the time the disputed transfers
23 were made to Ron V. Briggs, RJ Briggs, and Brian Briggs, PNB LP
24 and PNB Inc.'s liability to Plaintiff for the commission was
25 still only contingent in nature. If the liability were
26 discounted by 50%, then PNB Inc. would have retained funds in its
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1 portfolio account from August 2000 through September 2001
2 sufficient to prevent it from becoming insolvent due to the debt
3 owed to Plaintiff, even without considering the value of any
4 share that PNB Inc. held in PNB LP.

5 However, Ron V. Briggs, RJ Briggs, and Brian Briggs have not
6 presented sufficient evidence that such a discount is warranted.
7 Ron V. Briggs, RJ Briggs, and Brian Briggs argue for the fifty-
8 percent reduction on the basis of the El Dorado County Superior
9 Court's determination in August 2000 vacating the order of
10 examination obtained by Plaintiff and staying further attempts by
11 Plaintiff to collect a commission pending the outcome of an
12 evidentiary hearing. They argue that in order to impose such a
13 stay, the superior court had to find that PNB LP and PNB Inc. had
14 demonstrated a probability of success on the merits of its claim
15 that Plaintiff was not entitled to any commission. Ron V.
16 Briggs, RJ Briggs, and Brian Briggs assert that this finding
17 should be interpreted as a finding that PNB LP and PNB Inc.'s
18 chances of success were "more likely than not" and that this
19 should be equated with a "preponderance of the evidence" standard
20 that justifies a fifty percent reduction in the amount of the
21 potential debt to Plaintiff for the purposes of the insolvency
22 analysis.

23 This argument is not persuasive. First, Ron V. Briggs, RJ
24 Briggs, and Brian Briggs have presented no California state
25 authority regarding the method by which contingent liabilities
26 should be valued for the purposes of an insolvency analysis.
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1 Their citations to federal case law, including In re Xonics
2 Photochemical, 841 F.2d 198, 200 (7th Cir. 1988)), while
3 interesting, are not controlling, as Plaintiff is proceeding
4 under a cause of action created by state law, not federal law.
5 Second, Ron V. Briggs, RJ Briggs, and Brian Briggs's argument
6 that the granting of a preliminary injunction conclusively
7 established that PNB LP and PNB Inc. were "more likely than not"
8 to prevail on their assertion that Plaintiff was not entitled to
9 a commission is not supported by the evidence presented. The
10 order of the El Dorado Superior Court granting the preliminary
11 injunction references no finding that PNB LP and PNB Inc. were
12 more likely that not to prevail on the merits of their position,
13 and Ron V. Briggs, RJ Briggs, and Brian Briggs have not submitted
14 evidence of the superior court's findings of fact and conclusions
15 of law. Furthermore, a party's ability to obtain a preliminary
16 injunction cannot be equated with a probability that the party
17 will prevail on its claim. Huntingdon Life Sciences, Inc. v.
18 Stop Huntingdon Animal Cruelty USA, Inc., 129 Cal. App. 4th 1228,
19 1247-48 (2005); Lam v. Ngo, 91 Cal. App. 4th 832, 843 (2001). The
20 likelihood that a party will prevail on the merits of its claim
21 is not the only factor assessed by trial court in determining
22 whether to issue a preliminary injunction. A trial court also
23 assesses the harm that the party seeking the injunction will
24 likely sustain if an injunction is not granted. Both of these
25 considerations are taken into account, as well as the respective
26 equities of the case. Huntingdon Life Sciences, 129 Cal. App. 4th

1 at 1248. Therefore, Ron V. Briggs, RJ Briggs, and Brian Briggs's
2 reliance on the fact that PNB LP and PNB Inc. obtained a
3 preliminary injunction does not by itself serve as a sound basis
4 for discounting any contingent liability to Plaintiff by fifty
5 percent.

6 Furthermore, Ron V. Briggs, RJ Briggs, and Brian Briggs's
7 assertion that the contingent liability to Plaintiff should be
8 reduced by fifty percent is inconsistent with the manner in which
9 PNB LP and PNB Inc. treated the contingent liability at the time
10 that the Former Partners were bought out. At the time that the
11 Former Partners were bought out in August 2007, PNB LP directed
12 that the preliminary capital balance of PNB LP be adjusted to
13 account for the possibility that Plaintiff would eventually be
14 awarded a commission. As a result of this adjustment, the Former
15 Partners agreed to be bought out for less than the full amount of
16 their interests, effectively leaving \$700,000.00 in the limited
17 partnership for the satisfaction of any judgment that Plaintiff
18 might obtain. This valuation of the Former Partners' interest
19 strongly suggests that the PNB LP and PNB Inc. intended to retain
20 assets sufficient to satisfy in full any liability to Plaintiff.
21 As of September 2001, the assets of PNB LP and PNB Inc. had
22 declined to a point where even this \$700,000.00 was no longer
23 available in the event that Plaintiff obtain a money judgment.
24 Ron V. Briggs, RJ Briggs, and Brian Briggs's argument that the
25 amount of the liability for the purposes of the insolvency
26 analysis under Section 3439.05 should now be discounted by the
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1 court to an amount lower than that originally set aside for the
2 satisfaction of a potential judgment is inconsistent with the
3 prior treatment of the liability. The proposed fifty percent
4 discounting is not persuasive for this reason as well.

5 Therefore, because Ron V. Briggs, RJ Briggs, and Brian
6 Briggs have not set forth an adequate basis on which to discount
7 the contingent liability owed to Plaintiff, there is a genuine
8 issue of material fact as to whether PNB Inc. was insolvent at
9 the time that Ron V. Briggs, RJ Briggs, and Brian Briggs received
10 the transfers made to them.

11 Because Ron, RJ and Brian have not presented evidence
12 showing whether PNB LP or PNB Inc. made the transfers to them,
13 and because they have not established that under the evidence
14 they have presented there is no possibility that both PNB LP and
15 PNB Inc. could have been insolvent, genuine issues of material
16 fact may exist as to whether the transferring entity was
17 insolvent at the time that the transfers were made or whether the
18 transferring entity became insolvent as a result of the
19 transfers.
20

21 2. Section 3439.04(a)(2)

22 Similarly, with respect to Plaintiff's cause of action under
23 California Civil Code Section 3439.04(a)(2), Ron Briggs, RJ
24 Briggs, and Brian Briggs' failure to identify whether PNB LP or
25 PNB Inc. made the transfers that they admit they received
26 prevents the court from making a determination as to all elements
27 of the cause of action. Without evidence regarding the identity
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1 of the transferring entity, the court cannot make a determination
2 that there is no genuine issue of material fact as to whether the
3 entity received reasonably equivalent value in exchange for the
4 transfer. Without evidence regarding the identity of the
5 transferring entity, the court cannot also determine that there
6 is no genuine issue of material fact as to whether the
7 transferring entity was engaged or about to engage in a business
8 or a transaction for which its remaining assets were unreasonably
9 small in relation to the business or transaction, and the court
10 cannot determine whether the transferring entity intended to
11 incur, or reasonably believed that it would incur debts beyond
12 its ability to pay as they came due. Such an analysis is
13 particularly difficult to undertake without knowing the identity
14 of the transferring entity because the assets of PNB LP and PNB
15 Inc. each varied considerably during the period in question.

16 Again, as with Plaintiff's cause of action under Section
17 3439.05, Ron Briggs, RJ Briggs, and Brian Briggs' failure to
18 specify the identity of the transferring entity constitutes a
19 failure to meet their initial burden of demonstrating that there
20 are no genuine issues of material fact and that they are entitled
21 to judgment as a matter of law.

22 **3. Section 3439.04(a)(1)**
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24 With respect to Plaintiffs claim for relief under California
25 Civil Code Section 3439.04(a)(1), Ron Briggs, RJ Briggs, and
26 Brian Briggs' failure to specify whether PNB LP or PNB Inc. made
27 the transfers that they admit they received prevents the court

1 from determining whether there is a genuine issue of material
2 fact as to several of the factors set forth under Section
3 3439.04(b). In particular, without evidence regarding the
4 identity of the transferring entity, the court cannot determine
5 whether any genuine issue of material fact exists as to whether
6 the transfer was made to an insider, whether the transfer was of
7 substantially all of the transferring entity's assets, whether
8 the transferring entity was insolvent or became insolvent shortly
9 after the transfer was made, and whether the transferring entity
10 received value reasonably equivalent to the value of the asset
11 transferred. These aforementioned factors include some of those
12 that the court perceives to be the most significant factors
13 pertaining to actual intent given the facts of this case. Ron
14 Briggs, RJ Briggs, and Brian Briggs' failure to specify the
15 identity of the transferring entity constitutes a failure to meet
16 their initial burden of demonstrating that there are no genuine
17 issues of material fact and that they are entitled to judgment as
18 a matter of law with respect to whether the PNB Inc. made any
19 transfers to Ron Briggs, RJ Briggs, and Brian Briggs with actual
20 intent to delay, hinder, or defraud any creditor of the debtor.

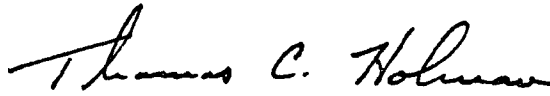
21 22 **Conclusion**

23 For the reasons stated in the foregoing memorandum decision,
24 Alexander Briggs is entitled to summary judgment that Plaintiff
25 take nothing by his claims for relief under California Civil Code
26 Sections 3439.04(a)(1), (a)(2), and 3439.05 and that Plaintiff

1 shall take nothing by his claim for relief for turnover. Ron
2 Briggs, RJ Briggs, and Brian Briggs are not entitled to summary
3 judgment on Plaintiff's claims for relief under California Civil
4 Code Sections 3439.04(a)(1), (a)(2) and 3439.05.

5 The court will issue a separate order.
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7 Dated: FEB - 7 2008



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9 Thomas C. Holman
United States Bankruptcy Judge
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